

ISSUE

ANSWER

FACTS

DISCUSSION

SCR 60.03(2)

The Committee concludes that SCR 60.03(2) does not prohibit a judge from testifying as a fact witness. The Rule prohibits a judge from voluntarily testifying as a character witness. Nonetheless, the Comment to this section directs that “a judge should discourage a party from requiring the judge to testify as a character witness.” The Committee therefore concludes that the judge should seek to discourage the party from using the judge as a character witness. The Preamble to the Code defines “should” as follows:

The use of “should” or “should not” in the rules is intended to encourage or discourage specific conduct and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

However, if the judge’s efforts are unsuccessful, the judge is under the same obligation as any other subpoenaed witness to respond.

CONCLUSION

The Committee concludes that SCR 60.03(2) means that a judge shall not **voluntarily** testify as a character witness. In addition, a judge should discourage a party from requiring the judge to testify as a character witness. The term “should” is not mandatory. However, the judge is under the same obligation as any other subpoenaed witness to respond.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 97-3 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this ____ day of _____, 1997.

Thomas H. Barland
Chair